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Supreme Court, U.S.
FILED
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No. 91-1845

In the Supreme Court of the United States

OCTOBER TERM, 1991

VARIOUS RECEIVER-PLAINTIFFS,
PETITIONERS,
v.
VARIOUS RAILROAD-DEFENDANTS,
RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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RULES.

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No. 91-1845

In the Supreme Court of the United States

OCTOBER TERM, 1991

VARIOUS RECEIVER-PLAINTIFFS,
PETITIONERS,

v.

VARIOUS RAILROAD-DEFENDANTS,
RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

Summary of Opposition.

Supreme Court Rule 10 sets forth the "special and important reasons" upon which this Court will grant a writ of certiorari. None of those grounds exist here. Petitioners here simply ask this Court to review the First Circuit Court of Appeals' order upholding the United States District Court for the District of Massachusetts' decision to dismiss certain cases for lack of prosecution. The decision in issue here is not in conflict with the decision of another Court of Appeals. (Supreme Court Rule 10(1)(a)). It does not involve a federal question. (Supreme Court Rule 10(1)(a) and (c)). Nor is it "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision." (Supreme Court Rule 10(1)(a)). Having failed to set forth any reason why this Court should grant Petitioners' writ, the writ must be denied.

Procedural History.[1]

The matters before the District Court consisted of approximately 1,700 civil lawsuits (the "lawsuits" or "cases"), which involved in excess of 2,200 individual freight damage claims. These lawsuits were commenced pursuant to the provisions of the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 11707, formerly 49 U.S.C. § 20(11) in the United States District Court for the District of Massachusetts by various Petitioners between 1971 and 1978. The lawsuits alleged that damages were sustained in the course of interstate transportation of shipments to the Boston area of various types of produce such as lettuce, tomatoes, celery and other perishable commodities. Those shipments occurred between approximately 1969, or earlier, and 1976. In each case, the produce was transported by one or more of the Respondents and delivered to one of the Petitioners.

On September 8, 1978, the claims practices which gave rise to the lawsuits were challenged by The Penn Central Corporation ("Penn Central") in an action filed in the United States District Court for the District of Massachusetts entitled, *Blanchette, et al., Trustees of the Penn Central Transportation Company v. John M. Cataldo, et al.*, Civil Action No. 78-236-S ("Blanchette"), in which John M. Cataldo, the claims agent responsible for filing the thousand of lawsuits, and nine of the largest Boston receivers, Community-Suffolk, Inc., Peter Condakes Company, Inc., P. Tavilla Co., Inc., Paramount Produce, Inc., Mutual Produce, Inc., A. Cavallaro Co., Inc., Big T Sales, Inc., Arthur G. Silk, Inc. and DiMare Brothers, Inc., were named as defendants.

---

[1] The facts set forth in Petitioners' memorandum are misleading and, in many instances, inaccurate. The actual procedure history of these cases as found by the District Court on October 7, 1991, is set forth below. (*See also* District Court Memorandum dated October 7, 1991, fn 2, Petitioners' Appendix, A3-A4).

At the commencement of *Blanchette*, the District Court, Caffrey, J., was requested by one of the railroad defendants to stay proceedings in the lawsuits pending resolution of the issues raised in the *Blanchette* litigation. Attorney Frank Infelise ("Attorney Infelise") on behalf of the various Petitioners opposed the moratorium request on the basis, *inter alia*, that:

> The commencement of the [*Blanchette*] litigation in question should not disrupt the judicial processes of this Court. . .

Plaintiffs' Memorandum in Opposition to Motion of Defendant for a Moratorium, dated November 20, 1978, par. 5. (App. 1-4). The request for a moratorium was denied by the District Court.

During the entire pendency of *Blanchette* (from September 1978, when *Blanchette* was commenced, until February 20, 1987, the date on which the final order was issued) and despite the court's denial of the moratorium sought by the railroads, the Petitioners did nothing to prosecute the lawsuits.

In 1980, the Clerk of the District Court administratively closed the lawsuits for lack of activity over a twelve-month period, thereby removing them from the Court's active docket. Thereafter, the clerk sent the files to off-site storage.

Petitioners took no action to prosecute the lawsuits following the administrative closure in 1980 until December 21, 1987, when Petitioners filed a motion with the District Court (Tauro, J.) seeking to remove the administrative closure orders on the lawsuits, and filing "List of Cases Subject to Motion to Bring Forward for Further Proceedings" ("Motion to Bring For-

ward").[2] Temporary Master Docket, MD 76 (App. 12). On February 5, 1988, the District Court denied Petitioners' Motion to Bring Forward.[3] Temporary Master Docket, MD 88 (App. 13).

On February 16, 1988, Petitioners filed Motion to Reconsider order of February 5, 1988 ("Motion to Reconsider"). Temporary Master Docket, MD 90 (App. 14). On February 23, 1988, the District Court denied Petitioners' Motion for Reconsideration. Temporary Master Docket, MD (date 2/23/88) (App. 14).

Petitioners did not appeal the District Court's orders of February 5 and February 23, 1988 and, as a result, those orders became final and binding.

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[2] Although initially assigned to various District Court Judges, the cases were consolidated for administrative purposes before the Honorable Judge Joseph Tauro in 1987. Upon the invitation of the District Court, each of the defendants moved to dismiss the lawsuits at the times indicated below:

> Florida East Coast Railway Company moved to dismiss on November 4 and 10, 1987. Temporary Master Docket, MD 17, 18 and 22 (App. 7).
>
> Southern Pacific Transportation Company, Holton Inter-Urban Railway Co., Santa Maria Valley Railroad Company, Stockton Terminal & Eastern Railroad, San Diego & Arizona Eastern Railway Co., Sunset Railway Co. and Northwestern Pacific Railway Co. moved to dismiss on November 30, 1987. Temporary Master Docket, MD 25 (App. 7).
>
> The Penn Central Corporation moved to dismiss on December 8, 1987. Temporary Master Docket, MD 66 (App. 11).
>
> The Atchinson, Topeka and Santa Fe Railway Company, Sunset Railway Company and Stockton Terminal and Eastern Railroad moved to dismiss on January 4, 1988. Temporary Master Docket, MD 84 (App. 13).
>
> The Consolidated Rail Corporation moved to dismiss on April 4; 1989. Master Docket, MD 4 (App. 15).
>
> Burlington Northern Railroad moved to dismiss on May 5, 1989. Master Docket, MD 38 (App. 18).

[3] Respondents motions to dismiss were thus rendered moot by virtue of the Court's action refusing to revive these cases and, therefore, were not acted upon at that time.

Over one year later, on April 4, 1989, Petitioners filed individual "Motions to Restore to Active Docket" in each of the 1,700 administratively closed cases which the District Court had refused to restore in 1988 ("Motions to Restore"). Master Docket, MD 1 (App. 15). On July 27, 1989, the District Court denied Petitioners' motions to "restore" on the ground that Petitioners "are bound by this court's February 1988 orders." Master Docket, MD 36 and 37 (App. 18).

On August 24, 1989, Petitioners appealed the District Court's July 27 Order, but on November 15, 1989 moved that the appeal be voluntarily dismissed. Master Docket, MD 45 (App. 18); General Docket (Case No. 891928), entry dated 11/17/89 (App. 25). On December 1, 1989, the First Circuit Court of Appeals dismissed Petitioners' appeal. General Docket (Case No. 891928), entry dated 12/1/89 (App. 26).

On March 19, 1990, over seven months after the District Court had issued its last order disposing of these cases, Petitioners filed individual motions for summary judgment in five of the lawsuits ("Motions for Summary Judgment"). Master Docket, MD 48, 51, 54, 57 and 60 (App. 19-20). On September 10, 1990, the District Court denied the Motions for Summary Judgment on the ground that "the pending motions are essentially motions to reconsider and vacate this court's prior order [which] this court declines to do." Master Docket, MD 82 (App. 22).

On September 26, 1990, Petitioners appealed the District Court's denial of the five summary judgment motions to the First Circuit Court of Appeals. Master Docket, MD 83 (App. 22). On January 3, 1991, the First Circuit Court of Appeals unanimously dismissed Petitioners' appeal, finding:

> neither error nor abuse of discretion in (1) the district court's interpretation of the most recent motions for summary judgment to be nothing more than essen-

> tially repetitive motions to reconsider and vacate its prior orders and (2) its declination to do so. And, the underlying cases, being stale, were properly dismissible for want of prosecution, in any event.

General Docket (Case No. 901963), entry dated 1/3/91 (App. 28 and 33).

Virtually ignoring the repeated orders listed above and in an obvious effort to end-run Judge Tauro, in June 1991, Petitioners filed with Judge Freedman in Springfield, Massachusetts (before whom the cases were no longer pending, having been consolidated before Judge Tauro in 1987) "Plaintiff-Receivers' Motion for Determination of Status of Cases." (App. 34). Upon the initiative of Judge Freedman, Petitioners' motion was transferred to Judge Tauro who, on July 17, 1991, ordered the parties to "file a certificate" and "appear at a hearing . . . to show good cause why these actions should not be dismissed for want of prosecution." (App. 36).

Based on the "prolonged period of unjustifiable inactivity," and the "prejudice to defendants" of being forced to try cases dating back 15 to 20 years, the District Court, on October 7, 1991, dismissed the cases with prejudice finding that:

> Plaintiffs have failed to identify any good reason either in their Certificate or at the September 27, 1991, hearing which would justify the nine-year delay in prosecution of these cases . . . . Moreover, so long a delay has substantially prejudiced the defendants, as witnesses' memories have faded and physical evidence has disappeared . . . . Indeed, the Court of Appeals for the First Circuit has already upheld the dismissal of these lawsuits, noting that the 'underlying cases, being stale, were properly dismissable for want of prosecution'. . . .

Master Docket, MD 1 and 2 (App. 23).[4]

On November 22, 1991, Petitioners appealed the District Court's October 7 Order to the First Circuit Court of Appeals. Master Docket, MD 3 (App. 23). Respondents filed a motion to dismiss the appeal on the ground that "no substantial question exist[ed]." General Docket (Case No. 912188), entry dated 11/27/91 (App. 30). On February 21, 1992, after Petitioners had already filed their appellate brief, the First Circuit Court of Appeals unanimously affirmed the District Court's order holding that:

> [w]e have considered the motion to dismiss and the opposition thereto, including appellants' brief, and the record on appeal. We agree with appellees' contention that no substantial question is present and affirm essentially for the reasons stated in the district court's memorandum of October 7, 1991.

General Docket (Case No. 912188), entry dated 2/21/92 (App. 31).

In summary, from the inception of these cases at various times between 1971 and 1978, through December, 1987, some nine to sixteen years later, Petitioners took no action at all to prosecute these cases. In December 1987, Petitioners filed a motion to bring the cases forward from administrative closure. The motion was denied by the District Court in early 1988 and no appeal was taken. Since 1988, Petitioners have filed three more motions and three appeals, all seeking the same relief denied in 1988 — to revive the cases. Each time the District Court and the Appeals Court denied Petitioners' motion. Finally, to prevent the abusive motion practice embarked on by Petitioners, the District Court, on July 17, 1991, ordered Petitioners to file a memorandum as to why the cases should not

[4] For the full text of the District Court's Opinion, see Petitioners' Appendix, A3-A5.

be dismissed. Petitioners failed to state any reason and on October 7, 1991, the District Court issued an order dismissing the cases based on Petitioners failure to prosecute and the prejudice to Respondents by Petitioners' delay. The First Circuit Court of Appeals reviewed all arguments forwarded by Petitioners and upheld the District Court's order dismissing the cases.

Reasons for Denying the Writ.

I. The District Court's Dismissal of the Lawsuits, Which Was Affirmed by the First Circuit Court of Appeals, Was Appropriate and Was Not an Abuse of the Court's Discretion.

The authority of a federal trial court to dismiss an action with prejudice for failure to prosecute is well established. *See e.g., Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962). Such a dismissal is discretionary and will be reversed only upon a showing of an abuse of discretion. *Corchado v. Puerto Rico Marine Management, Inc.*, 665 F.2d 410, 413 (1st Cir. 1981), *cert. denied*, 459 U.S. 826 (1982); *Richmond v. General Motors Corporation*, 437 F.2d 196, 199 (1st Cir. 1971); *Food Basket, Inc. v. Albertson's, Inc.*, 416 F.2d 937, 939 (10th Cir. 1969).

The First Circuit has upheld the District Court's authority to dismiss civil actions in substantially less egregious circumstances than those present here. *See, e.g., Colokathis v. Wentworth-Douglass Hospital*, 693 F.2d 7 (1st Cir. 1982), *cert. denied*, 461 U.S. 915 (1983), *rehearing denied*, 462 U.S. 1146 (1983) ("four and a half years" delay long enough

to invoke the sanction of dismissal for failure to prosecute). Petitioners failure to take any action in these cases for at least nine years, and in some cases as many as sixteen years, constitutes more than sufficient grounds for dismissal.[5] *See, e.g., Bendix Aviation Corp. v. Glass*, 32 F.R.D. 375, 377 (E.D. Pa. 1962), *aff'd*, 314 F.2d 944 (3d Cir. 1963), *cert. denied*, 375 U.S. 817 (1963) (plaintiff has failed to prosecute when plaintiff does nothing, knowing that until something is done there will be no trial). Dismissal was well supported by the record and was within the sound discretion of the District Court, all as found by the First Circuit Court of Appeals in affirming the District Court's actions.

II. The Issues Raised By Petitioners Do Not Merit Review By This Court.

The well established standard by which this Court exercises its discretionary power of review upon a writ of certiorari is embodied in Rule 10 of the Supreme Court Rules. That Rule requires that "a petition for a writ of certiorari will be granted only when there are special and important reasons therefor."[6] Since the issues raised by Petitioners in their application for a writ of certiorari are neither "special" nor "important," certiorari must be denied.

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[5] What Petitioners describe as their alleged "repeated efforts" to prosecute these cases is nothing more than the series of repetitive and abusive motions seeking to restore these cases filed since the District Court's initial orders in 1988. These motions were properly denied by the District Court and the denials properly upheld by the First Circuit Court of Appeals.

[6] The Rule lists those reasons that meet these qualifications: (i) a Court of Appeals decision in conflict with the decision of another Court of Appeals; (ii) decisions involving a federal question; and (iii) decisions "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision." Supreme Court Rule 10(1).

The issues raised by Petitioners are narrowly focused on how their individual interests are affected by the District Court's Order dismissing their lawsuits. Petitioners do not allege widespread confusion over the meaning of the automatic re-opening provision of Rule III(H) of the Administrative Office of the Judicial Conference of the United States,[7] nor do they allege a repetitive practice by the District Court in erroneously invoking Local Rule 41.1(b). Rather, Petitioners allege that the District Court abused its discretionary power in this single action. Such allegations do not merit the attention of this Court which "does not sit for the benefit of particular litigants." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955) (holding that writ of certiorari was improvidently granted). The requirement of "special and important reasons" for invoking Supreme Court review "impl[ies] a reach to a problem beyond the academic and episodic." *Id.* Given this Court's "capacity to decide only a small fraction of cases on the merits," this Court "must grant certiorari only in those cases that will enable [it] to resolve particularly important questions. *Yee v. City of Escondido, Cal.*, -- U.S. -- 112 S.Ct. 1522 (April 1, 1992). Clearly, the narrow issues raised by Petitioners, which relate solely to their particular litigation, do not merit review by this Court.[8] The District Court soundly exercised its discretionary power to dismiss cases which Petitioners had failed to prosecute for more than nine years and the Court of Appeals correctly upheld this authority. These actions are not "so far departed from the accepted and usual

[7] Indeed, Petitioners did not even invoke this part of the Rule, choosing instead to file a motion to bring the cases forward.

[8] The Supreme Court has routinely denied certiorari to virtually all cases involving Rule 41 dismissals for failure to prosecute. *See, e.g., Sheaffer v. Warehouse Employees Union, Local No. 730*, 408 F.2d 204 (D.C. Cir. 1969), *cert. denied*, 395 U.S. 934 (1969); *Ramsay v. Bailey*, 531 F.2d 706 (5th Cir. 1976), *cert. denied*, 429 U.S. 1107 (1977); *Alexander v. Pacific Martime Assoc.*, 434 F.2d 281 (9th Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971).

course of judicial proceedings, as to call for an exercise of this Court's power of supervision." Supreme Court Rule 10(1)(a).

Conclusion.

For the foregoing reasons, Respondents' state that the order of dismissal was within the sound discretion of the District Court and that no issue is presented which requires review by this Court. Respondents therefore submit that Petitioners' Writ of Certiorari be denied.

Respectfully submitted,

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Appendix.

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Appendix A.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VARIOUS PLAINTIFFS	)	
	)	
v.	)	ALL CASES PENDING UNDER
	)	49 USC SECTION 20(11)
SOUTHERN PACIFIC	)	BEFORE JUDGE CAFFREY
TRANSPORTATION	)	
COMPANY, Defendant	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION OF THE DEFENDANT FOR A MORATORIUM AS TO THE COURT'S ORDER

The various Plaintiffs, in support of their opposition to Defendant, Southern Pacific Transportation Company's Motion for a Moratorium as to the Court's Order, set forth the following grounds:

1. For some time prior to the commencement of Civil Action No. 78-2368-S, the Southern Pacific Transportation Company, together with all other defendant carriers, except for Penn Central Transportation Company, in accordance with the spirit and intent of the Court's Order, participated in meaningful negotiations, and as a result of the good faith efforts and willingness of all parties to "sit down" and exchange, discuss and confer on the merits of each individual case, several hundred cases were settled.

2. The participants to such negotiations included attorneys freight claim personnel, and various other railroad representatives all of whom have had many years of experience and expertise in freight loss and damage litigation and are fully

capable of evaluating the weight and credibility of the documentation and ascertaining whether "the underlying documents such as accounts of sale and inspection reports were either totally or partially fraudulent and/or false".

3. The Plaintiffs submit that the Southern Pacific Transportation Company by this motion seeks to obtain substantially the same relief sought by the Trustees of the Penn Central Transportation Company in Case No. 78-2368-S without a hearing on such action, without being a named party to such action, without a motion to join as a party to such action, and without any affirmative legal action or manifestation of its intent or willingness to adopt and accept the allegations of the Trustees of the Penn Central Transportation Company as set forth in said Complaint.

4. The Plaintiffs suggest that this Motion is a circuitous attempt by the Southern Pacific Transportation Company to seek legal redress without legal participation and to avoid what has heretofore been its custom and practice of investigating, conferring, negotiating, and evaluating the cases in which the Southern Pacific Transportation Company is the named defendant on a *Quid Pro Quo* basis.

5. The commencement of the litigation in question should not disrupt the judicial processes of this Court or prevent the Defendant from its own determinative evaluation of the merits of each case or serve as a bar or estoppel to the timely resolution of many of these cases.

6. This Defendant or any defendant carrier should not be permitted the largesse of treating loss and damage cases *en masse* and thereby cast aside and destroy the individuality of the facts, the documents, and the parties in each of these cases upon the mere presentation of a Complaint by the Trustees of the Penn Central Transportation Company in the eleventh hour of their stewardship (on October 24, 1978 the Trustees were relieved of their duties) containing, we submit, untenable,

generalized, and conclusory allegations of which the said Trustees had no "personal knowledge or documents in their possession which relate to the factual support for the litigation". (See copy of the Affidavit of Bernard G. Heinzen, attached hereto and marked "A".)

7. In addition, it would appear from the unconcluded deposition of Bernard G. Heinzen that many of the allegations of the Trustees of the Penn Central Transportation Company were for the most part reflective of Mr. Heinzen's guesses, feelings, and suspicions of judgment. It should be noted that at the time this Motion was filed, the Sourthern Pacific Transportation Company was probably unaware of the above matters, and, therefore, in addition to the said Affidavit, we are furnishing counsel for the Southern Pacific Transportation Company a copy of the transcript to-date of Mr. Heinzen's deposition.

CONCLUSION

The Plaintiffs submit that all parties hereto should be responsive to this Court's desire to dispose of the freight loss and damage cases by the continuance of their pre-Penn Central suit practice of conducting good faith negotiations. The imposition of a moratorium or stay order at this time would foreclose all future settlement discussions, would impair and prejudice the rights of the various receivers as party plaintiffs and as they are party defendants in the Penn Central suit, would impose an undue burden and hardship upon the plaintiffs, and, finally, such a moratorium would permit the unfair and advantageous usage by a non-party (Southern Pacific Transportation Company, and other defendant carriers) of an unsupported and unilateral action of another party (Penn Central Transportation Company).

The Plaintiffs request that this matter be set down for oral hearing. Approximate time, 20 minutes.

By their attorneys,
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Attorneys at Law, P.C.

BY:_____

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Appendix B.

TEMPORARY MASTER DOCKET
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
INTERSTATE FREIGHT DAMAGES CASES

1987		
Sept 10	MD 1	Letter to Clerk from Morris Goldings enclosing 200 Motions to Intervene for various freight claim cases.
	MD 2	Motion of Royal Packing Co to Intervene as a Party Plaintiff, filed
	MD 3	Adopted Complaint of Interveneing Plaintiff Royal Packing Co., (adopting co of Mutual Produce, Inc.)
	MD 4	Motion of John M. Catadlod d/b/a National Freight Traffic Service to Inter filed
	MD 5	Adopted Complaint of Intervening Plaintiff John M. Cataldo d/b/a National Freight Traffic Service (adopting complaint of Mutual Produce, Inc.)
	MD 6	Motion of Carol Joseph Maggio to Intervene as a Party Plaintiff, filed
	MD 7	Adopted Complaint of Intervening Plaintiff Carl Joseph Maggio ‹an individual successor to Joseph Maggio, Inc., Anthony Farms, Inc., Carl Joseph Maggio, and Magio, Inc.› (adopting complainto fo Mutual Produce, Inc.)
Sept 15	MD 8	Letter to Clerk form Nutter, McClennen & Fish, enclosing STIPULATION OF DISMISSAL for various cases from 72-2463-G to 78-2120-T (AS LIST IS EXTENSIVE SEE STIPULATION FOR INDIVIDUAL CASES NUMBERS).
Sept 16	MD10	Letter to Clerk from Mahoney, Hawkes & Goldings enclosing certificate of service for MD 1, MD 2, MD 3, MD 4, MD 5, MD 6 and MD 7.

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Sept 25	MD11	Opposition and Memorandum in Support of Opposition of PENN STATE CENTRAL CORPORATION to Inverten-tion Motions (#'d MD 2, MD 4, MD 6), filed
	MD12	Letter to Clerk from Nutter, McClennen & Fish Re: opposition to intervention motions stating that actions have been dismissed and that if the court hears motions to intervene, they request that depositions be taken if "the merits are considered relevant to the Court.
Oct 23	MD 13	TAURO, D.J.: COURT NOTES: REPORTER: CURRY› CONFERENCE, Mr. Goldings to memoranda on issue of whether the motion to intervene stays actions and other matters raised by the Court on or before 11/13/87. Mr. Chused and Mr. Gleason to file reply briefs on or before 11/30/87. Mr. Goldings to provide to counsel and Court a list of all cases with numbers in which he seeks to intervene. Within the next 3 weeks the parties are ordered to meet and confer with another seeing if these matters cannot be resolved along the lines suggested by the Further Conference scheduled for December 14, 1987 at 2:15 P.M. All parties who have filed motions to dismiss over the years and have never received action by the Court are to re-submit motions to Ms. Coughlin and will be acted on by Judge Tauro.
Oct 30	MD 14	Copy of Memo sent to all counsel by Morris Goldings proposing the date of 11/6/87 at 1:00 P.M. for meeting in an attempt to settle cases.
Nov 2	MD 15	Copy of Letter to Mr. Goldings from Wesley S. Chused in response to # MD 14. Mr. Chused is unavailable to meet on 11/6/87 but suggest that meeting be scheduled towards the end of November in an attempt to resolve matters.

1987

Nov 4 *	MD 16	Copy of Memo from Morris M. Goldings to all counsel suggesting date of 12/3/87 at 10:00 a.m. for meeting in an attempt to resolve matters.
Nov 10	MD 17	MOTION TO DISMISS of Deft FLORIDA EAST COAST RAILWAY COMPANY, filed c/s ‹COMMUNITY SUFFOLK, INC. v. FLORIDA EAST COAST RAILWAY C.A. 78-1078-F›
	MD 18	MOTION TO DISMISS OF DEFT FLORIDA EAST COAST RAILWAY COMPANY, filed c/s ‹BOSTON TOMATOR COMPANY v. FLORIDA EAST COAST RAILWAY COMAPNY C.A. 78-1165-F›
Nov 13	MD 19	Memorandum of Law in Support of Motions to Intervene (#'s MD 2, MD 4, MD 6), filed
	MD 20	Affidavit of Morris Goldings, Esquire Re: Memo to Lsw in Support of Motions to Intervene, filed c/s
Nov 23 *	MD 21	Objections of the deft, THE ARCHISON, TOPEKA & SANTA FE RAILWAY CO., To Motions To Intervene of JOHN CATALDO, CARL JOSEPH MAGGIO & ROYAL PACKING CO. FILED. cs.
Nov 4	MD 22	MOTION TO DISMISS OF DEFT FLORIDA EAST COAST RAILWAY COMPANY, filed c/a ‹BOSTON TOMATO COMPANY, INC. v. FLORIDA EAST COAST RAILWAY COMPANY C.A. 78-1102-S.
Nov 18	MD 23	P's memo in oppos to D's mtn to dismiss, filed c/s
Nov 23	MD 24	MOTION OF DEFT UNDER RULE 37(d) TO DISMISS, filed c/s. ‹RALPH DeMARCO d/b/a MARCO TOMATO CO., v. THE ATCHISON, TOPEKA & SANTA FE RAILWAY
Nov 30	MD 25	DS' MOTION TO DISMISS UNDER RULE 41(b) and LR 19 filed, c/s. [24 Ps - Attached Exh. A. v. Southern Pacific Transpo. Co., et al.

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NOV 30	MD 26	D's Memo in Support of Their Motion to Dismiss Under Rule 41(b) of the FRCP and LR 19, filed, c/s. [24 Ps - Attached Exh. A v. Southern Pacivic Transpo. Co., et al.
NOV 30	MD 27	Affidavit of Counsel of Ds Southern Pacific Transpo. Co. Holton, et al in Support of Ds' Motion to Dismiss, filed, c/s [24 Ps - Attached Exh. A v. Southern Pacific Transp. Co. et al.
NOV 30	MD 28	Affidavit of Carol A. Harris in Support of D's Motion to Dismiss Under Rule 41(b) FRCP and LR 19, filed, c/s.
NOV 30	MD 29	Proposed - Order of Dismissal for Failure to Prosecute, filed, c/s. [24 Ps - Attached Exh. A v. Southern Pacific Transpo. Co., et al.
NOV 30	MD 30	Supplemental Memo of Ds Southern Pacific Transpo. Co., et al in Oppos. to Motions of Carl Joseph Maggio, Royal Packing Co., and John M. Cataldo, d/b/a National Freight Service to Intervene Under Rule 24(a)(2), filed, c/s. [Mutual Produce Inc., v. Southern Pacific et al.
DEC 1	MD 31	Notice of appearance of counsel for defendant Consolidated Raul Corp., filed by Helene Kazanjian, CA 78-1558-S.
DEC 1	MD 32	Notice of appearance of counsel for Pltf, Mutual Produce, Inc. filed by Alan L. Lewis, CA 78-1558-S.
DEC 1	MD 33	STIPULATION OF DISMISSAL by parties in CA 78-78-1558-S, filed. c/s. [Mutual Produce v. Consolidated Rail Corp.
DEC 1	MD 34	Notice of appearance of counsel for defendant Consolidated Rail Corp. by Helene Kazanjian, filed, /c.s [Mutual produce Inc. v. Consolidated 78-1929-S.
DEC 1	MD 35	Notice of appearance of counsel for pltf, Mutual Produce, Inc., filed by Alan L. Lewis, c/s. [Murual Produce v. Consolidated Rail, CA 78-1929-S.
DEC 1	MD 36	STIPULATION OF DISMISSAL by parties filed. [Mutual Produce v. Consolidated Rail Corp. CA 78-1929-S.

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DEC 1	MD 37	Notice of appearance of counsel for defendant Consolidated Rail Corp., by Helene Kazanjian, filed, c/s. [Mutual Produce v. Consolidated Rail, 78-1384-C.
DEC 1	MD 38	Notice of appearance of counsel for Plaintiff, Mutual Produce, Inc., filed by Alan L. Lewis, c/s. [CA 78-1384-C
DEC 1	MD 39	STIPULATION OF DISMISSAL by parties filed, c/s. [Mutual Produce v. Consolidated Rail, CA 78-1384-C.
DEC 1	MD 40	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated, CA 78-1662-T.
DEC 1	MD 41	Notice of appearance of Counsel for pltf., Mutual Produce, Inc., filed by Alan L. Lewis, c/s.
DEC 1	MD 42	STIPULATION OF DISMSISSAL filed by parties, c/s. [Mutual Produce v. Consolidated Rail, CA 78-1662-T.
DEC 1	MD 43	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA 78-1827-F.
DEC 1	MD 44	Notice of appearance of counsel for plaintiff filed by Alan L. Lewis. [Mutual produce, v. Consolidated, CA 78-1827-F.
DEC 1	MD 45	STIPULATION OF DISMISSAL filed by parties, c/s. [Mutual Produce v. Consolidated, CA 78-1827-F.
DEC 1	MD 46	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA 78-1268-S
DEC 1	MD 47	Notice of appearance of counsel for plaintiff filed by Alan L. Lewis. [Mutual produce v. Consolidated, CA 78-1268-S
DEC 1	MD 48	STIPULATION OF DISMISSAL filed by parties, c/s. [Mutual Produce v. Consolidated, CA 78-1268-S.
DEC 1	MD 49	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA78-2116-T.

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DEC 1	MD 50	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Alan L. Lewis [Mutual Produce v. Consolidated, 78-2166-T.
DEC 1	MD 51	STIPULATION OF DISMISSAL filed by parties, c/s. [Mutual Produce v. Consolidated, CA 78-78-1116-T.
DEC 1	MD 52	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA 78-1116-C.
DEC 1	MD 53	Notice of Appearance of counsel for plaintiff filed by Alan L. Lewis. [Mutual produce, v. Consolidated, CA 78-1116-C
DEC 1	MD 54	STIPULATION OF DISMISSAL filed by parties, c/s. [Mutual Produce v. Consolidated, CA 78-1116-C.
DEC 1	MD 55	Notice of Appearance of counsel for plaintiff filed by Alan L. Lewis. [Mutual produce, v. Consolidated, CA 78-1468-MA
DEC 1	MD 56	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA 78-1468-MA
DEC 1	MD 57	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA 776-T
DEC 1	MD 58	Notice of Appearance of counsel for plaintiff filed by Alan L. Lewis. [Mutual produce, v. Consolidated, CA 78-78-776-T
DEC 1	MD 59	STIPULATION OF DISMISSAL by parties filed, c/s. [Mutual Produce v. Consolidated, CA 78-78-776-T
DEC 1	MD 60	Notice of appearance of counsel for defendant Consolidated Rail Corp., filed by Helene Kazanjian, c/s. [Mutual Produce v. Consolidated Rail, CA 965-T.
DEC 1	MD 61	Notice of Appearance of counsel for plaintiff filed by Alan L. Lewis. [Mutual Produce, v. Consolidated, CA 78-965-T

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DEC 1	MD 62	STIPULATION OF DISMISSAL filed by parties, c/s. [Mutual Produce v. Consolidated, CA 78-965-T.
DEC 3	MD 63	P's Memo in Oppos. to D's Motion to Dismiss filed, c/s. [Boston Tomato Co. v. Florida East Coast, CA 78-1165-F.
DEC 3	MD 65	Reply memo in Support of Oppos. of the Penn Central Corp. to Intervention Motions, (Attached various Exh. A), filed, c/.s [Mutual Produce, v. Penn Central Corp.
DEC 8	MD 66	Motion to Dismiss, filed, c/s. [Various Ps (See attached Exh. A) v. The Penn Central Corp.
DEC 8	MD 67	Memo in Support of Penn Central's Motion to Dismiss for Failure to Prosecute filed, (See Exh. A attached). [Various Ps v. the Penn Central Corp.
DEC 8	MD 68	Affidavit of Raymond F. Glenn, Exh. A) attached, filed, c/s. [Various Ps v. The Penn Central Corp.
DEC 9	MD 69	Mtn for admission pro hac vice of HYMAN HILLENBRAND, filed, c/s.
DEC 9	MD 70	Memorandum of various Ps in oppos to D's mtn to dismiss under R.R.C.P. Rule 37(d) ‹Ralph DeMarco d/b/a Marco Tomato Co. v. The Atchison, Topeka & Santa Fe Railway Co. CA 74-2024-S & attached list of cases Marked "A"›
DEC 14	MD 72	TAURO, D.J.: FURTHER HEARING RE: MOTION TO INTERVENE (CLERK NOTES: RPTR: CURRY Mr. Goldings to provide to court a complete list of all cases in which he seeks to intervene w/in one week as well as to provide to all counsel. All other parties to file whatever necessary to protect their interest w/i one week thereafter. Parties ordered to meet and confer re: settlement on 12-21-87 @ 12-22-87 @ offices of Mr. Gleason between 9:30 a.m. & 4:00 p.m. All parties are ORDERED to be in attendance. Motion to Intervene taken under advisement. Administra-

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		tive closings remain in effect until Mr. Goldings files a list accompanied by a motion listing the 3,000 or so cases he refers to. List to be provided w/in one week.
DEC 14	MD 73	P's opposition to PENN CENTRAL's & VARIOUS RAILROADS' mtn s to dismiss for failure to prosecute, FILED, cs. [VARIOUS PLTFFS THE PENN CENTRAL CORP. & VARIOUS RAILROADS]
Dec 15	MD 74	Letter to Clerk from David W. Walsh dtd 12-15-87 enclosing copy of letter forwarded this date to Atty Goldings relating to the Mutual - Santa Fe Cases FILED.
Dec 21	MD 75	List of cases subject to mtns to intervene, FILED, cs. (Lists attached)
Dec 21	MD 76	List of cases subject to mtn to bring forward for further proceedings, FILED (Lists attached)
Dec 30	MD 77	Letter to Judge Tauro dtd 12-30-87 from Wesley S. Chused re: listed cases. After many conference over the past several months, Ps' offered a proposal that would resolve all outstanding lawsuits...Unfortunately, the Ps & the Proposed Intervenors rejected the proposal...Southern Pacific feels that under these circumstances, the Court should act upon the pending mtns...Southern Pacific submits that the Court should deny the mtn to intervene in the Mutual cases and should grant Southern Pacific's mtn to dismissd all other administratively cases under Rule 41(b). FILED. cs.
Dec 30	MD 78	Ds' reply to "LIST OF CASES" filed by proposed intervenors, FILED. cs.
Dec 30	MD 79	Affidavit of Michael A. McGourty, FILED. cs.
Dec 30	MD 80	Ds' oppos to Ps' mtn to bring forward for further proceedings. FILED. cs. ‹25 PS AS LISTED IN EX. "A" v. SOUTHERN PACIFIC, ET AL.›

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Dec 31	MD 81	Deft PENN Cental Corp." smtn to strike list of cases subject to mtns to inter FILED. cs. ‹Mutual Produce, Inc. v. Penn Central Corp.›
Dec 31	MD 82	Oppos of PENN CENTRAL to Receivers' mtn to bring forward for further proceedings FILED. cs.
Dec 21	MD 82A	Stipulation for order for extension of time to and including 01-05-88. FILED.

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Jan 05	MD 83	Oppos & memo in support of oppos to mtns to intervene of ROYAL PACKING CO., JOSEPH MAGGIO & JOHN M. CATALDO d/b/a NATIONAL FREIGHT TRAFFIC SERVICE, FILED. (Exhibit A attached listing cases in this action)
Jan 04	MD 84	Ds' mtn to dismiss under F.R.C.P. 41(b)(2), FILED. cs. ‹Various Ps v. The Atchinson et al.›
Jan 15	MD 85	TAURO, D.J.: PROCEDURAL ORDER, Entered. Cl for the PETITIONERS TO INTERVENE is instructed to submit to the court, or or before January 29, 1988, the basis for his standing to bring this mtn on behalf of these "Various Receiver-Pltf. IT IS SO ORDERED. cc/cl.
Feb 03	MD 86	TAURO, D.J.: MEMORANDUM, Entered. cc/cl.
"	MD 87	TAURO, D.J.: ORDER, Entered. For the reasons set forth in the accompanying memo, the Petitions to Intervene's mtns to intervene are DENIED. IT IS SO ORDERED. cc/cl. (Published)
05	MD 88	TAURO, D.J.: ORDER, Entered. Counsel for the Petitioners to Intervene having failed to respond to the attached procedural order, the mtn to bring forward certain cases for further proceedings is DENIED. IT IS ORDERED. cc/cl.
16	MD 89	Mtn to reconsider Order of February 3, 1988. FILED. cs. ‹Mutual Produce, Inc. v. The Penn Central Transportation Co., Et als...Variour Frieght Damages Case›

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Feb 16	MD 90	Mtn to reconsider Order of February 5, 1988. FILED. cs. ‹Various Receiver-P1 v. Various Railroad Defendants›
19	MD 91	Oppos of Consolidated Rail Corp.'s mtn to reconsider Order of February 3, 19 (MD 89) ‹Mutual Produce, Inc. v. Consolidated Rail Corp.›
"	MD 92	Oppos of Consolidated Rail Corp. to mtn to reconsider Order of February 5, (MD 90) ‹Various Receivers v. Consolidated Rail Corp.›
Feb 23		TAURO, D.J.: DENIED - DOCUMENT #89. cc/cl.
"		TAURO, D.J.: DENIED - DOCUMENT #90. cc/cl.
Mar 03	MD 93	John M. Cataldo, d/b/a National Frieght Traffic Service, Royal Packing Co. & Carl Joseph Maggio 's NOTICE OF APPEAL, FILED. cs. John M. Cataldo...et al. appeal the order of February 3, 1988 denying their mtns to intervene actions.
09		FOR THE PURPOSE OF APPEAL, M.B.D. #88-217-T ISSUED AS DOCKET No.
11		Certified copy of docket and original pleadings certified this date to Court of Appeals

Appendix C.

MASTER DOCKET
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
INTERSTATE FREIGHT DAMAGE CASES

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Apr. 4	01	MOTION to restore cases to active docket, FILED. cs.
	02	MEMORANDUM in support of pltfs' motions to restore case to active docket, FILED with attached listing of individual freight damage cases. cs.
14	03	OPPOSITION of Consolidated RAil Corp. to motion to restore cases (as per attached list) to active docket, FILED. cs.
04	04	Consolidated Rail Corp.'s MOTION TO DISMISS for failure to prosecute FILED. cs.
	05	MEMORANDUM in support of #4, FILED. cs.
Apr.10	06	OPPOSITION of Sunset Railway Co. to pltf's motions to restore case to active trial docket, FILED. cs.
	07	OPPOSITION of Texas Mexican Railway Co. to pltfs' motions to restore cases to active trial docket, FILED. cs.
	08	OPPOSITION of Stockton Terminal & Eastern Railroad to pltfs' motion to restore cases to active trial docket, FILED. cs.
	09	OPPOSITION of Atchison, Topek and Santa Fe Railway Co. to pltfs' motions to restore cases to active trial docket, FILED. cs.
	10	OPPOSITION of Boston and Maine Corp. to pltfs' motions to restore cases to active trila docket, FILED. cs.
12	11	MEMORANDUM of defts Southern Pacific Transportation Co., Holton Inter-Urban Railway Co., Santo Maria Valley

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Railroad Co., Stockton Terminal & Eastern Railroad, San Diego & Arizona Eastern Railway Co., Sunset Railway Co. and Northwestern Pacific Railway Co. (1) in OPPOSITION to motions to restore to active docket and bring forward for further proceedings and (2) in support of request for Rule 11 sanctions, FILED. cs.

Apr	12	12	MOTION by pltfs for leave to file reply to various defts' opposition to pltfs' motion to restore cases to active trail docket , and request for oral argument, FILED. cs.
	13	13	Deft Florida East Coast Railway Co.'s MOTION to dismiss pursuant to Rule 41(b) and Local Rule 19, FILED. cs.
		14	Florida East Coast Railway Co.,s OPPOSITION to pltfs' motions to restore cases to active docket and MEMORANDUM in support of its motion to dismiss, FILED. cs.
	19	15	(1) OPPOSITION of Penn Central Corp. to pltfs' motion to restore to active docket and (2) MOTION to impose sanctions with respect to same, FILED. cs.
	21	16	Letter from Atty. Troy re: #14 - original executed affidavits of Norman J. Richards and Aubrey D. Wages enclosed to be substituted for copies attached to #14, FILED.
	27	17	Pltfs' MOTION for enlargement of time (to respond to oppositions), FILED. cs.
	27		TAURO, D.J. RE: #17 - "Allowed. Plaintiffs response to be filed on or before May 5, 1989." cc/cl.
May	17	18	TAURO D.J. Hearing re: motion to restore to active docket. Arguments of counsel. Daniel Gleason to act as lead counsel for defendants. Parties are to prepare a memorandum of position with respect to each issue. Proposed Findings of Fact

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		referenced to any transcripts or pleadings to be filed by both pltf & defts by c/o/b June 16, 1989. Responses if any, shall be filed by c/o/b June 30th. When submissions are received, court will take matter under advisement.
June 16	19	Ps' Proposed Findings of Fact filed; CS.
	20	Various Ds' Proposed Findings of Fact filed; CS.
	21	Various Ds' Appendix to #20 filed.
08	22	Notice of Change of Counsel for Def. Florida East Coast Railway in 94 actions listed on Exh. A: withdrawal of appearances of Norman J. Richards and Paul E. Troy and appearance of Wesley S. Chused filed; CS.
20	23	Appearance of Andrew M. Osborne for Ps. in 74-2845-C, 76-2490-M, 77-0401-G and 77-0410-T filed.
	24	Appearance of Wesley S. Chused for Def. Southern Pacific Transportation in 74-2845-C, 76-2490-M, 77-0401-G and 77-0410-T filed.
	25	STIPULATION OF DISMISSAL with prejudice and without costs filed in 77-0410-T.
	26	STIPULATION OF DISMISSAL with prejudice and without costs filed in 74-2845-C.
	27	STIPULATION OF DISMISSAL with prejudice and without costs filed in 77-0401-G.
	28	STIPULATION OF DISMISSAL with prejudice and without costs filed in 76-2490-M.
30	29	REPLY of Receiver-Pltffs to Proposed Findings of Fact of RAILROAD Ds. FILED. cs.
30	30	Affidavit of FRANK INFELISE FILED. cs.
30	31	RESPONSE of Various Ds to Ps' Proposed Findings of Fact. FILED. cs.
30	32	AFFIDAVIT OF BERNARD F. O'RILEY. FILED.
July 10	33	REPLY AFFIDAVIT of WESLEY S. CHUSED in support of response of various Ds to Ps' proposed Findings of Fact ....ORIGINAL...(copy was filed on June 30, 1989 as Exhibits A) FILED. cs.

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July 17	34	Various Ds' mtn to strike reply of Receiver-Ps to proposed findings of fact of Railroad-Ds or alternatively for leave to file a reply. FILED. cs.
25	35	Receiver-Ps' oppos to Railroad-Ds' mtn to strike. FILED. cs.
27	36	TAURO, D.J.: MEMORANDUM, Entered. cc/cl.
27	37	TAURO, D.J.: ORDER, Entered. For the reasons stated in accompanying memo Pltff/interveners' mtns to restore are DENIED. IT IS SO ORDER.cc/cl.

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May 5	38	Deft Burlington Northern Railroad's motion to dismiss for failure to proescute and opposition to plts motion to restore cases to active docket, filed c/s
	39	Pltf's reply to various railroad-dfts oppositions to motions to restore cases to docket and motions to dismiss, field c/s
12	40	Letter to court from various defense counsel re: concerns over the May 5th reply memo and affidavit of John M. Cataldo that accompanied (Memo and "Cataldo Affidavit), filed (various attachments --including transcripts of 12/14/87 and 10/23/87 hearings),
15	41	Transcript of October 23, 1987 hearing, filed
17	42	Letter to court from pltf's counsel enclosing copy of 10/23/87 hearing transcript
May 16	43	Notice of Appearance by Helen Kazanjian filed on behalf of 20 Consolidated Railroad cases, filed
June 8	44	Notice filed by Atty Wesley Chused notifying court of change in counsel on 94 cases on behalf of deft Florida East Coast Railway Company
Aug 24	45	NOTICE OF APPEAL, Filed from order entered July 27, 1989

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Sept 25		CERTIFIED COPY OF DOCKET, NOTICE OF APPEAL & ORDER OF JULY 27, 1989, FORWARDED to MARY CALLAHAN, U.S. COURT OF APPEALS.
25	46	Letter to Morris Goldings, Esqurie, from clerk requesting copies of document #'d 19 - 20 and 31.
Oct 12		Certified copy of docket & original pleadings forwarded to court of appeals.
Dec 26	47	USCA, ORDER OF COURT, Entered. Upon motion of appellants, and no opposition having been filed, IT IS ORDERED that hte aobve captioned appeal be DISMISSED. Each party shall bear its own costs. Appellees' motions to dismiss are MOOT. Mandate issued forthwith.
1990		
Mar 19	48	Pltf's motion for summary judgment (76-1850-S) FILED CS.
19	49	Memorandum of law in support of #48 FILED CS
19	50	Affidavit of John M. Caraldo in support of motion for summary judgment (76-1850-S) FILED
19	51	Pltf's motion for summary judgment (76-2028-G) FILED CS.
19	52	Memorandum in support of #51 FILED CS.
19	53	Affidavit of John M. Cataldo in support of motion for summary judgment (76-2028-G)
19	54	Pltf's motion for summary judgment (77-1911-S) FILED CS.

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Mar	19	55	Memorandum in support of #54 FILED CS
	19	56	Affidavit of John M. Cataldo in support of motion for summary judgment(77-1911 - S)
	19	57	Pltf's motion for summary judgment(77-2445-T) FILED CS.
	19	58	Memorandum in support of #57 FILED CS.
	19	59	Affidvit of John M. Cataldo in support of motion for summary judgment (77-2445-T)
	19	60	Pltf's motion for summary judgment (75-450-C) FILED CS.
	19	61	Memorandum in support of #60 FILED C.S
	19	62	AFFIDAVIT OF John M.Cataldo in support of motion for summary judgment (78-450-C)FILED
	28	63	Notice of withdrawal of appearance of Weld S. Henshaw as counsel for Burlington Northern Inc., (77-2445-T) FILED CS.
Apr	4	64	Deft's objections to the filing of pltf's motion for summary judgment and in support of its motion to dismiss (77-1911-T) FILED CS.
	4	65	Motion of defts Southern Pacific Transportation Co and Burlington Northern Inc to be consolidated before the Honorable Joseph L. TA (76-1850-S; 76-2028-G; 77-2445-T; 78-450-C) FILED CS.

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Apr 4	66	Defts motion for enlargement of time for 60 days to respond to pltf's motions for summary judgment (76-1850-S; 76-2028-G; 77-2445-T; 78-450-C) FILED CS.
4	67	Defts reply in opposition to pltf's motions for summary judgment 76-1850-S; 76-2028-G; 77-2445-T; 78-450-C) FILED CS
4	68	Exhibits to defts reply in opposition to pltf's motion for summary judgment (76-1850-S; 76-2028-G; 77-2445-T; 78-450-C) FILED
18	69	Pltf's reply to defts Southern Pacific Transportation Co's and Burlington Northern Inc., motions for consolidation and enlargement of time and opposition to motions for summary judgment (76-1850-S; 76-2028-G; 77-2445-T;78-450C) FILED CS.
18	70	Pltf's reply to deft's objections to filing motion for summary judgment (77-1911-S) FILED CS
23	71	Deft Railroads motion to enjoin pltfs from further prosecution of these lawsuits and for attorney's fees, costs and expenses (various Freight Damage Cases as listed in Appendix "A" hereto) FILED CS.
23	72	Memorandum in support defendant Railroads motion to enjoin pltfs further prosecution of these lawsuite(various Freight Damage Cases as listed in Appendix "A" hereto) FILED CS
23	73	Exhibits to #71 FILED
27	74	Defts' motion for leave to supplement their reply to pltf's motions for summary judgment (76-1850-S; 76-2028-G; 77-2445-T; 78-450-C) FILED CS.

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Apr 27	75	Defts supplemental reply in opposition to pltf's motions for summary judgment (76-1850-S; 76-2028-G; 77-2445-T; 78-450-C) FILED CS
27	76	Defts motion to strike pltf's reply to defts opposition to motions for summary judgment (76-1850-S;76-2028-G; 77-2445-T; 78-450-C) FILED CS.
May 9	77	Pltfs' opposition to defts' motion to enjoin pltfs from further prosecution, FILED.
9	78	Pltfs' opposition to defts' motion to strike (RE: 76-1850-S, 76-2028-G, 77-2445-T and 78-450-C), FILED.
June 20	79	TAURO, D.J. Hearing held re: why court should now deal w/ pltf's motions for summary judgment. Parties to submit a 10 page brief w/proposed orders. Briefs shall be consolidated for pltfs and defts. Parties instructed to confer re: settlement. If not settled briefs w/proposed orders to be filed w/i 21 days of break down in settlement negotiations.
Aug 13	80	MEMORANDUM of law of receiver-plaintiffs, FILED. cs.
13	81	Defts' SUPPLEMENTAL MEMORANDUM pursuant to court order, FILED. cs.
Sept. 10	82	TAURO, D.J. MEMORANDUM, entered. "...The pending motions are essentially motions to reconsider and vacate this court's prior orders. This court declines to do so. the pending motions, therefore, are denied." cc/cl
Sept. 26	83	NOTICE OF APPEAL re: 9/10/90 memo and order, FILED. cs. Fee pd.

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Oct 3		Certified copy of docket & notice of appealforwarded to appeals clerk

[At the time of printing of this Appendix, the page of the docket sheet showing docket entries between October 4, 1990 and October 7, 1991, was not available. The text of the two relevant entries during that time period which are referred to in Respondents' opposition memorandum are set forth in full in App. H and I at pp. 34-36.]

1991		
Oct 7	1	TAURO D.J. Order Entered, for the Reasons stated in the acompanying Memo, this cases is hereby Dismissed cc/cl
7	2	TAURO, D.J. Memo Entered case DIsmissed.....
Nov 1	3	Pltf's notice of appeal filed c/s

Appendix D.

GENERAL DOCKET
FIRST CIRCUIT COURT OF APPEALS
CASE NO. 891928
VARIOUS RECEIVER PLAINTIFFS v.
PENN CENTRAL TRANSPORTATION CO., ET AL.

1989	
Oct. 2,	Notices of appeal and district court docket entry, received and filed. Case docketed and notices mailed (eml)
Oct. 10	Appearance of David W. Walsh, Esq., for the Defendants, Appellees, The Atchison Topeka and Santa Fe Railway Co., Sunset Railway Co., Stockton Terminal & Eastern Railroad, The Texas Mexican Railway Co., received and filed.(lp)
Oct. 10	Appearance of Richard J. Ferriter, Esq., for the Defendants, Appellees, Boston and Maine Corp., received and filed.(lp)
Oct. 11	Defendants Penn Central Transportation, Co., Consolidated Rail Corporation, Boston & Maine Corporation, The Atchison, Topeka and Santa Fe Railway Company, Sunset Railway Company, and Stockton Terminal and Eastern Railroad's Motion to Dismiss Appeal received and filed. (1b) Memorandum of defendants Penn Central Transportation, Co., Consolidated Rail Corporation, Boston & Maine Corporation, The Atchison, Topeka and Santa Fe Railway Company, Sunset Railway Company, and Stockton Terminal and Eastern Railroad in support of their Motion to Dismiss Appeal received and filed.(1b)
Oct. 11	Appearance of Daniel J. Gleason, Esq., and Michelle J. Lipton, Esq., for the Defendant, Appellee, The Penn Central Transportation, Co., recived and filed.(efp)

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Oct. 12.	ORDER: (Breyer, J.) Appellant is ordered to show cause why this appeal should not be dismiss by October 25, 1989. Notices mailed. (eml)
Oct. 12	Record on appeal in II Volumes consisting of pleadings # 1-46, received and filed. Notices mailed.(lp)
Oct. 16	Appearance of Morris M. Goldings, Esq., for the Plaintiffs-Appellants, received and filed.(lp)
Oct. 16	Appellees' motion to dismiss appeal received and filed. (lb) Memorandum of defendants-appellees Southern Pacific Transportation Company, Holton Inter-Urban Railway Co., Santa Maria Valley Railroad Company, Stockton Terminal & Eastern Railroad, San Diego and Arizona Eastern Railway Co., Sunset Railway Co., Northwestern Pacific Railway Co. and Flordia East Caost Railway Co. in support of their motion to dismiss appeal received and filed. (lb) Appearance of Wesley S. Chused, Esquire for appellees received and filed. (lb)
Oct. 18	Appearance of Helene Kazanjian, Esq., for appellees, recieved and filed. (efp)
Oct. 24	Appellant's Statement of Issues and Designation of Contents of Appendix, recieved and filed. (efp)
Oct. 25	Opposition to Defendant-Appellees' motion to dismiss, recieved and filed. (efp)
Oct. 25	Appellants' showing of cause why appeal should not be dismissed, received and filed. (efp)
Nov. 3	Appellees designation of contents of appendix, received and filed. (ac).
Nov. 17	Appellants' motion to voluntarily dismiss appeal pursuant to Rule 42(b) of Federal Rules of Appellate Procedure received and filed. (lb)

1989

Dec. 1	Order: (Selya, J.) upon motion of appellants, and no opposition having been filed, It is ordered that the above captioned appeal be dismissed. Each party shall bear its own costs. Appellees' motions to dismiss are moot. Notices mailed. (rm)
Dec. 26	Mandate issued, copy field. and original papers returned to the district court. Notices mailed. (ac)

Appendix E.

GENERAL DOCKET
FIRST CIRCUIT COURT OF APPEALS
CASE NO. 901963
VARIOUS RECEIVER PLAINTIFFS v.
PENN CENTRAL TRANSPORTATION CO., ET AL.

1990

Oct. 9	Copy of notice of appeal and district court docket entries received and filed. Case docketed and notices mailed.(jm)
Oct. 12	Record on appeal consisting of two (2) volumes received and filed. Notices mailed. (jm)
Oct. 15	Appearance of Frank Infelise, Esq. for hte plaintiff, appellant, received and filed. (Eml)
Oct. 15	Appearance of Daniel J. Gleason, Esq. and Michelle J. Lipton, Esq. for Penn Central Transportation Co., received and filed. (rm)
Oct. 15	Appearance of Morris M. Goldings, Esq. and Richard S. Jacobs, Esq. for appellants received and filed. (ji)
Oct. 15	Appearance of Richard J. Ferriter, Esq. and David W. Walsh, Esq. for appellees received and filed. (ji)
Oct. 16	Appearance of Wesley S. Chused, Esquire, as counsel for the appellees, Southern Pacific Transportation Company and Burlington Northern, Inc., received and filed. (db)
Oct. 18	Appearance of Paul F. Ware, Esq., adn Keven W. Clancy, Esq., as counsel for the appellees, received and filed. (db)
Oct. 23	Appellant's Designation Of Contents Of Appendix And Statement Of Issues received and filed. (db)

1990

Oct. 25 Appellant's Corrected Designation of Contents of Appendix received and filed. (db)

Nov. 6 Motion to dismiss appeal pursuant to Rule 27.1 of the FRAP with First Circuit Rules; Memorandum in support of motion to dismiss pursuant to Rule 27.1 of the FRAP with First Circuit Rules received and filed. (ji)

Nov. 13, Motion filed. Order: (Selya, J.) It is ordered that the time for filing appellant statement of issues and designation of the contents of the appendix to the briefs be enlarged to and including December 17, 1990. It is further ordered that the time for filing the brief for appellant and appendix to the brief be, enlarged to and including January 4, 1991. Notices mailed. (eml)

Nov. 14 Plaintiff-appellants' opposition to defendant-appellees' motion to dismiss appeal received and filed. (lb)

Dec. 14 Appellant's Statement of Issues And Amended Designation Of Contents Of Appendix received and filed. (db)

1991

Jan. 3 ORDER: (Campbell, Selya and Cyr, JJ) granting the appellees' motion to dismiss for reasons stated in said order. Notices mailed. (ji)

Jan. 7 Motion of plaintiffs-appellants for vacation of order of the court entered January 3, 1991 and for hearing thereon received and filed. (bf)

Jan. 15 Defendants-appellees' response to plaintiffs-appellants' "Motion to Vacate" received and filed. (lb)

Feb. 6 ORDER: (Torruella, J.) The motion to vacate our order of January 3, 1991 and for hearing thereon is denied. Notices mailed. (jm)

1991

Feb. 14 Mandate issued. Copy filed. Original papers returned to the district court. Notices mailed. (pm)

Appendix F.

GENERAL DOCKET
FIRST CIRCUIT COURT OF APPEALS
CASE NO. 912188
VARIOUS RECEIVER PLAINTIFFS v.
VARIOUS RAILROADS ET AL.

1991

Nov. 22 Record on appeal in one volume, received and filed. Case docketed and notices mailed. (ac)

Nov. 27 Appellees motion to dismiss appeal, received and filed. (ac)
Appellees memorandum in support of motion to dismiss appeal received and filed. (ac)
Appendix of defendants, appellees, received and filed. (ac)

Nov. 29 Appearance of Wesley S. Chused, Esq. for appellees, received and filed. (ac)

Nov. 29 Appearance of Daniel J. Gleason,Esq. and Michelle J. Lipton, Esq. for appellee, received and filed. (ac)
Appearance of Richard J. Ferriter, Esq. for appellee, received and filed.(ac)

Dec. 4 Appellant's statement of issues and designation of the contents, received and filed. (ac)
Appearance of Morris M. Goldings, Esq. and Richard S. Jacobs, Esq. for appellants received and filed. (ac)
Appearance of Susan M. Insoft, Esq. for appellee, received and filed. (ac)
Appearance of David W. Walsh, Esq. for appellee, received and filed. (ac)

1991

Dec. 12 Appellee's designation of contents and appendix, received and filed (ac)

Dec 26 Brief and 3 volumes of appendix of appellant received and filed Notices mailed. (bf)

1992

Jan. 7 Motion filed. ORDER: (Campbell, J.) enlarging the time for appellees to file its brief to and including February 17, 1992. Notices mailed. (ac)

Jan 17 Appellants opposition to any further extension of time to file appellees brief, received and filed. (ac)

Jan. 30 Motion for Extension of Time Pending Decision on Summary Disposition, received and filed.(db)

Feb. 4 Appellants opposition to railroads second motion for extension of time to file brief, received and filed. (ac)

Feb. 4 ORDER: (Seyla, J.) The motion for an extension of time is granted and the time of filing appellees' brief is hereby enlarged to and including March 16, 1992. Notices mailed. (ac)

Feb. 21 ORDER: (Torruella, Campbell, Selya, JJ) We have considered the motion to dismiss and the opposition therto, including appellants' brief, and the record on appeal. We agree with appellees' contention that no substantial question is presented and affirm essentially for the reasons stated in the district court's memorandum of October 7, 1991. Affirmed. Loc.R. 27.1. Notices mailed. (ac)

March 16, Mandate issued, copy filed original papers returned to district court. Notices mailed. (ac)

May 26 Notification from the Supreme Court that on May 20, 1992, a petition for writ of certiorari, Supreme Court No. 91-1845, October 1991 Term, received and filed.(db)

Appendix G.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 90-1963

VARIOUS RECEIVER PLAINTIFFS,
Plaintiffs, Appellants,

v.

PENN CENTRAL TRANSPORTATION CO., ET AL.,
Defendants, Appellees.

Before

Campbell, Selya and Cyr,
Circuit Judges.

ORDER OF COURT

Entered January 3, 1991

We have considerable doubt whether the notice of appeal describes the appellants with sufficient specificity. See Torress v. Oakland Scavenger Co., 487 U.S. 312 (1988); see Santos-Martinez v. Soto-Santiago, 863 F.2d 174, 176 (1st Cir. 1988) ("That the appellees and the court might, by further inquiry, eventually ascertain the identity of the actual appellants is not enough, as the Torres Court has indicated in its near-unanimous decision.") We need not answer the question definitively, for

nothing turns on it. Assuming we have appellate jurisdiction, we would conclude that dismissal is appropriate. We find neither error nor abuse of discretion in (1) the district court's interpretation of the most recent motions for summary judgment to be nothing more than essentially repetitive motions to reconsider and vacate its prior orders and (2) its declination to do so. And, the underlying cases, being stale, were properly dismissible for want of prosecution, in any event.

We, therefore, grant the appellees' motion to dismiss since it "clearly appear[s] that no substantial question is presented." Loc. R. 27.1.

By the Court:

FRANCIS P. SCIGLIANO, Clerk

By: ss/DANIEL F. LOUGHRY
Chief Deputy Clerk

[cc: Messrs. Goldings, Jacobs, Infelise, Walsh, Ferriter Ware, Clancy, Chused, Gleason, Osborne]

Appendix H.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

VARIOUS RECEIVER-PLAINTIFFS,	)	
Plaintiffs,	)	
v.	)	FREIGHT DAMAGE CASES
VARIOUS RAILROAD-DEFENDANTS,	)	
Defendants.	)	

PLAINTIFF-RECEIVERS' MOTION
FOR DETERMINATION OF STATUS OF CASES

The Plaintiff-Receivers hereby respectfully request this Honorable Court to determine the status of the several pending freight damage cases. The Docket Numbers of these cases are attached hereto and marked "A". In support of this Motion the Plaintiff-Receivers state that they belive that there has been sufficient activity in the freight damages cases since their filing to constitute the cases aspending and eligible for further procedings and that the cases may not now be dismissed for inactivity. Motions to Dismiss filed by some Defendants with

respect to certain of the cases from time to time have not been ruled upon. In *Blanchette v. Cataldo*, the Court specifically declined to dismiss the cases. Attached hereto and marked "B" is a Summary of Litigation Acitivity between the Plaintiff-Receivers and the Defendant Railroads from 1978 to the present.

The Plaintiff-Receivers also respectfully seek clarification as to whether and, if so, by what procedure or rule all of the remaining freight damages cases (as distinguished from those on which there has been an adjudication) have in fact been transferred to The Honorable Joseph Tauro for disposition, in order tha they may otherwise pursue their remedies before the various judges to whom the cases were originally assigned.

In further support of this Motion, the Plaintiff-Receivers state that these cases constitute valuable property rights of theirs which they wish to assert and request that the Court hold a hearing or conference with all interested parties to determine the most efficient and fair procedure for resolution of these cases consistent with their unique litigational history. The Plaintiff-Receivers suggest that, in view of the application of Rule III(H) of *The Guide to Judiciary Policies and Procedures* to these case, the Court may wish to enlist the services of the Administrative Office of the District Courts in resolving these matters.

VARIOUS RECEIVER-PLAINTIFFS,

By their Attorneys,

_____

Morris M. Goldings
Richard S. Jacobs
MAHONEY, HAWKES & GOLDINGS
40 Rowes Wharf
Boston, Massachusetts 02110
(617) 439-7600

Dated: June , 1991

Appendix I.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Various Receiver-Plaintiffs, Plaintiffs,	*	
v.	*	Various Freight Damage Cases
Various Railroad-Defendants, Defendants.	*	

ORDER

July 17, 1991

TAURO, D.J.

Pursuant to Local Rule 41.1(b)(1), the parties are hereby ordered to appear at a hearing on August 26, 1991 at 10 a.m. to show good cause why these actions should not be dismissed for want of diligent prosecution. Each party shall serve and file a certificate in compliance with Local Rule 41.1(b)(1) by August 9, 1991.

IT IS SO ORDERED.

_____

United States District Judge